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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 157/2011**

Decided on 15th April, 2015

GOVT. OF NCT OF DELHI

..... Appellant

Through : Mr. Amit Ahlawat, APP

versus

BHAGVIR SINGH

..... Respondent

Through : Mr. Lovinder Choudhary, Adv.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J. (ORAL)

1. Since 14th April, 2015 was declared holiday, matter is taken up today.
2. Appellant has filed this appeal against the acquittal of respondent by the trial court for the offences under Sections 186/353/333 IPC. Trial court has disbelieved the complainant PW1 Shri K.L. Juneja in view of inherent discrepancies in his statement viz-a-viz the prosecution story, as set up in the charge sheet.
3. I have heard learned counsels for the parties and perused the record completely and do not find any perversity in the impugned order, inasmuch as the view taken by the trial court is a possible view. It is trite law that an order of acquittal cannot be interfered with by the appellate court since it

feels that some other view is also possible. In order to ensure that the innocents are not punished, the Appellate Court should attach due weight to the lower courts' acquittal because the presumption of innocence is further strengthened by the acquittal of an accused. The Appellate Court should, therefore, reverse an acquittal only when it has "very substantial and compelling reason." Appellate Court will interfere with order of acquittal in case it is shown that the findings of the Trial court are perverse or suffer from manifest error resulting in miscarriage of justice. In case two views are possible on the evidence adduced before the Trial Court and the view taken by the Trial Court is a possible view, Appellate Court would refrain from interfering and substituting its own view against the possible view taken by the Trial Court.

4. In *State of Karnataka v. K. Gopalkrishna* (2005) 9 SCC 291, it has been held that in case of acquittal, Appellate Court has not to lightly disturb the findings of fact recorded by the court below. If on the basis of the same evidence, two views are reasonably possible, and the view favouring the accused is accepted by the Court below, that is sufficient for upholding the order of acquittal. However, if the Appellate Court comes to the conclusion that the findings of the Court below are wholly unreasonable or perverse and

not based on the evidence on record, or suffers from serious illegality including ignorance or misreading of evidence on record, the appellate court will be justified in setting aside such an order of acquittal. In *The State of Goa v. Sanjay Thakran* (2007) 3 SCC 755, it was held that generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The principal to be followed by appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. Similar view has been expressed in *Nepal Singh v. State of Haryana* JT 2009(7) SC 172. Similar view is expressed in *Chandrappa and Ors. v. State of Karnataka* (2007) 4 SCC 415.

5. FIR was registered on the complaint of PW1, who was working as Junior Engineer with Municipal Corporation of Delhi at the relevant time. He alleged in the FIR that on 23rd July, 2003 he went to the office of the

Municipal Councillor (respondent), situated at Gali No. 32, Tuglakabad Extension along with his Assistant Shri Ravi Dutt at 12:30 PM to discuss some complaint. After he reached in the office, he was welcomed and the respondent discussed the matter with him. 6-7 persons were present in the office of the Councillor. Thereafter, respondent took him to another room and demanded ₹1,00,000/- and when he refused, respondent slapped him resulting in grievous injuries in his ear. He was taken to All India Institute of Medical Sciences (AIIMS) by Ravi Dutt.

6. Ravi Dutt has been examined as PW2. He has not supported the version of PW1 at all. He has denied that respondent had slapped PW1 in his presence. PW2 has deposed that on 23rd July, 2003 he along with PW1 Shri K.L. Juneja went to the office of respondent at Tuglakabad Extension in respect of some complaint. He claims that nothing had happened in the office of respondent, in his presence. As per the prosecution, PW2 is an eye witness to the incident and respondent had slapped the PW1 Shri K.L. Juneja in presence of PW2. However, this version has remained uncorroborated. Thus, testimony of PW1 has to be scrutinized with care and caution. In the FIR, PW1 did not state that PW2 had accompanied him to the room where respondent had taken him and demanded ₹1 lac. However,

while deposing in Court he has stated that he went in that room along with Ravi Dutt. In the FIR, PW1 has stated that respondent demanded ₹1,00,000/-. However, while deposing in Court he has stated that respondent asked him to bear his expenses. According to the FIR, PW1 had reached the office of respondent at about 12:30 PM and thereafter discussions took place, wherein respondent slapped him and immediately thereafter Ravi Dutt removed him to AIIMS; meaning thereby the incident had taken place immediately after 12:30 PM. However, complainant reached AIIMS at 2:50 PM. himself, as has been recorded in the DD No.17A (Ex.PW7/A). In the FIR, complainant has stated that Ravi Dutt took him to the hospital. However, it has not been mentioned in the MLC that complainant was admitted by Ravi Dutt, inasmuch as DD No. 17-A (Ex. PW7/A) dated 23rd July, 2003 shows that complainant had himself gone to the hospital. In the MLC, history has been given as “assault at about 2:50 PM following which he developed inability to hear in his left ear. In his deposition, PW1 has claimed that he remained hospitalized for five days. However, as per PW7 SI Brij Kishore, he prepared site plan Ex. PW7/C on 25th July, 2003 at the instance of complainant. Had PW1 remained hospitalised for five days, site plan could not have been prepared on 25th July, 2003.

7. The discrepancies noted above makes the statement of PW1 unreliable and has rightly not been accepted by the trial court to be trustworthy so as to prove the prosecution story beyond shadow of reasonable doubt. The view taken by the trial court is, thus, a possible view and does not suffer from any perversity.

8. For the foregoing reasons, appeal is dismissed.

A.K. PATHAK, J.

APRIL 15, 2015

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